

## CHAPTER 3

# UPDATES ON PRIOR ISSUES

Tracking all prior and pending recommendations made by the Office of the Independent Police Auditor (IPA) is a vital component of the overall operation of the IPA. The IPA tracks the status of all previous recommendations. The IPA also conducts random audits to measure compliance of prior recommendations. This chapter contains updated information of recommendations made by the IPA in last year's report and selected recommendations from prior years.

### *PROVIDING THE PUBLIC INFORMATION ABOUT THE IPA AND COMPLAINT PROCESS BACKGROUND*

In the 1995 Mid-Year Report, the IPA recommended that the San Jose Police Department educate and train command staff, all officers, and dispatchers on the purpose and functions of the Office of the Independent Police Auditor, including where a complaint could be filed. This recom-

mendation was based on the need for police department staff to provide accurate and detailed information to the public about the IPA and the Internal Affairs (IA) Unit and the options available on where and how to report a complaint regarding police misconduct.

**Update:** During the 2001 calendar year, representatives of the IPA called three different SJPD telephone numbers to determine if proper information was being provided to the public about the IPA, IA, and the procedures for filing a misconduct complaint against a SJPD officer. The following are the results:

1. The IPA caller contacted the SJPD Watch Commander telephone number and asked where a complaint against a SJPD officer could be reported. The person who answered the call responded by asking the caller to provide her with the name of the

officer so that she could refer the caller to that officer's supervisor. The caller then asked if there was an agency that was not a part of the police department, where one could file a complaint. The caller was placed on hold for some time and then referred to the IPA. The caller was also informed that they did not know if the IPA took complaints and was provided with an old IPA telephone number, which is disconnected.

2. The IPA caller contacted a dispatcher by calling the 311 non-emergency Police Department telephone number. The dispatcher referred the IPA representative to the Watch Commander without providing the caller with any information about the IPA or Internal Affairs Unit.
3. The IPA caller contacted a SJPD staff member at the

Bureau of Field Operations, where the caller was asked the officer's name so that they could refer the caller to that officer's supervisor. The caller was also provided with an obsolete telephone number for the IPA and was told that the IPA does not take complaints but just audits them.

SJPD Information Center (front lobby), so they can provide the public with expedient and accurate information. When SJPD personnel are in doubt about what information to provide a caller or where to refer a caller, they should direct the caller to the Customer Service Call Center (277-4000).

officers must believe that they are in partnership with the public. The police and community must develop mutual trust. This implies that the community will have faith in the integrity of the police and that police will go beyond the realm of only trusting other police officers and extend that virtue to community partners.

### **RECOMMENDATION**

To ensure that accurate and updated information is being provided to the public about the citizen complaint process and the functions of IA and the IPA, an on-going training program for all SJPD personnel, especially those who are in positions to provide information to the public, should be instituted and maintained. The training should instruct all San Jose police representatives who receive a citizen complaint, or potential complaint, to refer that citizen to the on-duty Watch Commander, Internal Affairs Unit, or the Independent Police Auditor. This information should be available to the officers at the

### **ETHICS & INTEGRITY STANDARDS BACKGROUND**

In the 2000 Year End Report, the IPA recognized that public trust in police is defined as having a strong reliance on the integrity, ability, and character of the police. It can only exist when the police execute their duties fairly, courteously, and with no more force than necessary. A police department that conducts itself in this manner is said to be ethical and operating with integrity. This is the desired state that all police departments should strive to achieve.

The IPA also called attention to the fact that in order for community policing to be effective, police

The report reviewed the ethics and integrity standards of the SJPD and found them to be aligned with those of the community, beginning with the vision and ethical tone set for the department by Chief William Lansdowne. Chief Lansdowne established a mandatory ethics training program as part of the Continuous Professional Training offered by the SJPD. Now, all members of the SJPD must receive this training and Chief Lansdowne emphasizes the importance of ethics training by making it a point to be present at the beginning of every ethics class. Furthermore, the IPA monitored the ethics training classes and found them to be effective in stressing the department's ethical standards.

While the IPA found the SJPD's ethics training to be commendable, it found a need to evaluate the effectiveness of this training program. The only way the SJPD is able to measure an officer's adherence to ethical conduct is through an examination of Internal Affairs files and yearly personnel evaluations. After researching various sources of information on this subject, the IPA concluded that the effectiveness of ethical training on individual officers depends on the organizational standards set by the department; whether the standards have been clearly communicated; whether these standards are strictly enforced; and what individual officers think and feel about different issues relating to ethics and integrity.

### ***PRIOR RECOMMENDATIONS***

As a result of this review, the IPA made the following recommendations, which were adopted by the Chief of Police and the City Council:

*1. The SJPD should implement a process by which the police department can assess the current knowledge, attitudes, or views of police officers towards the required ethical conduct expected of each officer. The police department should find out what its officers think of the disciplinary and complaint procedures. Thereafter, the SJPD should conduct ongoing research to monitor any shifts in the attitudes or views of SJPD officers on issues relating to ethical conduct.*

**Update:** The IPA in conjunction with the SJPD has developed a survey form that is based on a successful program utilized by the Research and Preventative Division of the Australia Criminal Justice Commission. This survey is designed to measure attitudinal changes in ethical conduct by regularly administering the survey to recruits, first year and experienced officers. It is anticipated that the SJPD will begin administering the survey in the 2002 calendar year.

*2. San José Police Department policies do not include a comprehensive Whistleblower policy. By incorporating federal Whistleblower guidelines, the Chief of Police should create a comprehensive Whistleblower policy for the San José Police Department.*

**Update:** In response to this recommendation the San José Police Department stated that SJPD employees were subject to the same local, state or federal Whistleblower requirements that are applicable to all City of San José employees and therefore a specific policy for the SJPD is not necessary.

*3. The Chief of Police should include, in all citizen complaint printed materials, wording that clearly states that, "Retaliation against complainants is prohibited. The Chief of Police will not tolerate retaliation and immediate action will be taken if an officer retaliates against a complainant directly or indirectly," or other similar words that emphasize the Chief's position.*

**Update:** Whenever citizen complaint materials are reprinted by the SJPD, this clause is now included. It is also included in the IPA's brochures.

*4. The Chief of Police should continue to develop Ethics and Integrity training to reflect and align with the ethics expected by the citizens of San José.*

**Update:** The SJPD continues to require that all officers from patrol officers to the Chief of Police receive the four-hour ethics training that is part of the SJPD's Continuous Professional Training program.

### ***VEHICLE STOP DEMOGRAPHICS BACKGROUND***

Since July 1, 1999, the SJPD has been collecting data that identifies the ethnicity, gender and age of every individual subject to a vehicle stop by a San José police officer. The action taken against the driver as a result of the vehicle stop and the location of the vehicle stop is also tracked. The SJPD was one of the first major

city police departments to voluntarily undertake this type of data collection effort in response to community concerns that officers engaged in racial profiling and conducted pretext stops of minority community members.

Racial profiling continues to be a sensitive issue and still lacks an accepted and recognized definition. With regard to vehicle traffic stops, racial profiling for the most part is a police officer's use of race or ethnicity as a deciding factor in making a traffic stop. Although the term racial profiling has been used to describe unwarranted stops of minority citizens, the terms "Driving While Black" or "Driving While Brown" (DWB) have been used by the general public to describe how minorities believe they are characterized by law enforcement throughout the country.

In the 2000 Year End Report, the IPA reviewed the SJPD's Vehicle Stop Demographic Study for the period of July 1, 1999 to June 30, 2000. In this first vehicle stop report, the SJPD found that

African Americans and Hispanic Americans were stopped at a slightly higher rate than their overall representation within San José. The SJPD attributed the increased number of stops of individuals from these minority groups to socio-demographic realities of the City and the necessity by the SJPD to deploy more officers accordingly. The SJPD study hypothesized that more officers are assigned to higher crime police districts and, therefore, minorities who live in these neighborhoods are likely to be stopped in greater numbers.

The IPA's analysis of the SJPD's Vehicle Stop Demographic Study indicated that Hispanic Americans were being stopped at a significantly higher rate when compared to their overall representation in the City, even in those areas of the City where Hispanic Americans do not make up as large a percentage of the population. The IPA concluded that these disproportionate figures appeared to be problematic and required further study.

Last year's IPA Report also acknowledged that while the initial vehicle stop data being collected by the SJPD was an acceptable starting point, other law enforcement agencies, including the San Diego Police Department and the Sacramento Police Department, had expanded the scope of the data being collected to include much more detail. In addition to the data collected by the SJPD, San Diego PD also documents whether the driver was searched or arrested. Sacramento PD collects this data and also requires the recording of the legal and factual basis for the search.

The availability of search and arrest data for persons who were stopped would enable an analysis of whether Hispanic Americans or other minorities are being searched and/or arrested at higher rates than would be expected based on the percentage they represent of the general population. This type of data combined with vehicle stop data would provide a more reliable basis for determining whether Hispanic or African Americans are

being disproportionately impacted by vehicle stops.

**Update:** Although the SJPD continues to collect the same vehicle stop data that was analyzed in the Vehicle Stop Demographic Study for the period of July 1, 1999 to June 30, 2000, they have not analyzed the data for the following year from July 1, 2000 to June 30, 2001. Therefore, a comparative analysis between the first and second years of collecting this type of data is not possible at this time.

### ***PRIOR RECOMMENDATIONS***

1. *"It is recommended that the Chief of Police expand the fields for data collection to determine how the individual stopped was treated, i.e. was there a search. This should include search information, the factual basis for a stop and the action taken by the officer as a result of the stop."*

**Update:** The IPA made this recommendation to better assess whether Hispanic Americans and other minorities are being dispro-

portionately impacted by vehicle stops. This recommendation was not adopted because of the possibility that the state would adopt legislation requiring all law enforcement agencies in the state to gather vehicle stop data.

However, by the end of 2001, it did not appear likely that any such state legislation would move forward and become law. Given the lack of any uniform mandate from the state to collect vehicle stop data, the IPA is renewing this recommendation as a new recommendation in this report.

2. *"It is recommended that the Chief of Police develop a uniform definition where the complainant alleges that his/her vehicle stop or police contact was racially motivated and a process for tracking all 'Racial Profiling' allegations."*

**Update:** The SJPD and the IPA are continuing to discuss modifying complaint classification and allegation definitions to provide a way to better track all complaints of racial discrimination including

those complaints that do not include specific allegations of racial terms, gestures or acts. The new definitions and classifications will be incorporated into the new IA/IPA shared database system in the 2002 calendar year.

3. *"The SJPD should expand the platform of the database used by the Internal Affairs Unit to facilitate the recording, tracking and analysis of 'Racial Profiling' and all other types of citizen complaints."*

**Update:** IA and IPA have researched new database systems that will accomplish this and expect to finalize this process and purchase a new system before the end of the current fiscal year.

### ***COMPLAINTS FILED ALLEGING RACIAL PROFILING***

In last year's Year End report, the IPA identified the difficulty of tracking complaints with racial profiling allegations. Currently, the SJPD complaint classification structure provides only one formal

case classification for a racial profiling allegation. It is named, Discrimination/Harassment (DH).

This case classification is utilized for various types of discrimination and harassment complaints and is not limited to racial profiling complaints.

Also, in order for a racial profiling allegation to be formally investigated as a DH complaint, there must be "objective criteria" on which this allegation can be based. Objective criteria can include an allegation that the officer used a derogatory word, gesture or action that demonstrates racial bias or discrimination. It is insufficient if the allegation is based only on the complainant's belief that the only reason he/she was stopped was because of their race. This determination remains unchanged even if it appears the officer had no other legitimate reason to stop the complainant in the first place. This is also true even if an officer handcuffed a person, searched his vehicle and then released them without taking any legal action against them.

If a racial profiling allegation is made without objective criteria, the complaint could be classified as an informal complaint or some other classification, which is not subject to a formal investigation.

Therefore, in order to track and analyze future racial profiling allegations, the IPA has to capture racial profiling allegations as part of the complainant's statement in all types of complaints whether or not the complaint is classified as an official discrimination allegation.

In 2000, the IPA reported that there were 16 complaints that included racial profiling allegations. In 2001, 17 complaints included allegations of racial profiling. An analysis of these cases indicates that these complainants felt they were victims of racial profiling for the same types of reasons as those complainants in the previous year. Many thought they were stopped because of the type of car they were driving and solely because they were African American or Hispanic. Others thought that the minor vehicle code or vehicle equipment violation for which they

were stopped was just a pre-text for stopping them.

### ***NEW RECOMMENDATIONS***

- A. The Chief of Police should expand the fields for data collection to determine how the individual stopped was treated, i.e. was there a search. This should include search information, the factual basis for a stop and the action taken by the officer as a result of the stop. (Renewed recommendation from last year)

- B. The SJPD should compile and review vehicle-stop data on an annual basis and prepare a report to the City Council with this information.

### ***OFFICER INVOLVED SHOOTINGS BACKGROUND***

In response to a recommendation made in the IPA 1998 Year End Report, the SJPD established the Officer-Involved Shooting Incident Training Review Panel, a formal process to allow the IPA to

participate with the SJPD in a review of all police shootings resulting in injury or death whether or not a complaint was filed. The purpose of this review process is to determine if any training needs exist or if any changes need to be made to a current police policy or procedure. The members of the panel include the Chief of Police, the Deputy Chief of the Bureau of Field Operations, the Independent Police Auditor, the Training Unit Commander, the Internal Affairs Unit Commander, and a representative from the City Attorney's Office.

Members of the SJPD Homicide Unit provide an audio-visual presentation to the panel summarizing the events of the case, as they are responsible for investigating all officer-involved shootings. The panel considers all the information provided and makes recommendations that can lead to the adoption of a new training plan or a change/development of a policy or procedure.

In 1999, SJPD officers were involved in eight shootings, seven

of which resulted in fatal wounds to the suspect. All eight cases were reviewed by the shooting review panel. In 2000, there were five officer-involved shooting incidents, three of which resulted in fatal wounds to the suspect. Although these statistics demonstrated a decrease in the number of officer-involved shootings and fatalities, the IPA recommended that the SJPD continue to investigate methods to decrease these incidents further.

Since two of the five suspects were armed with a weapon other than a firearm and both these suspects had histories of mental illness, the IPA recommended that the SJPD continue to identify less lethal weapons, make them more readily accessible to officers and to provide more training in handling suspects with weapons other than firearms and suspects with mental illness histories.

These recommendations were adopted with the 2000 Year End Report.

**Update:** During the past year, the SJPD has expanded the number



of less lethal weapons available to officers, such as the “L-8,” a shotgun-type weapon that fires a large 40 millimeter projectile which is designed to disable a suspect without killing or seriously injuring the suspect. The SJPD has also continued to improve and expand its force-option training. This training allows officers to react to live computer generated simulations that can be altered as the simulation progresses. The SJPD also has increased the number of officers who have received advanced training as members of the Crisis Intervention Team where among other things, officers receive special training on how to work with people with mental disabilities in a crisis situation.

In 2001, there were four officer-involved shootings, two of which resulted in fatal wounds to the suspect. In two of the four cases, the suspects were armed with weapons other than firearms. In one case the suspect was armed with a large kitchen knife and in the other, the suspect was armed with a hammer and a knife. The

suspect in the first case was injured, but the suspect in the second case was mortally wounded. Since both of these cases occurred late in the year, the review panel did not have the opportunity to review these cases until later this year. However, it is of continued importance to recognize as was stated in last year’s report, *“when suspects are not armed with a firearm, officers may have an opportunity to use alternatives other than shooting if they are not in imminent danger. In these situations, it is important to have less lethal weapons readily available. Retreat is not legally required, but is an alternative in cases where officers need time to reassess the situation.”*

It is promising to see that the number of officer-involved shootings has been reduced from five to four. It is probable that the SJPD has been successful in reducing the number of officer-involved shootings because of the increased training received by members of the department in the use of less lethal force and the increased deployment of less

lethal weapons.

In addition to officer-involved shootings where the suspect is injured or fatally wounded, the review panel also reviews other serious cases involving the use of firearms or where a suspect dies while in custody. In 2001, two such cases were reviewed. One case involved a situation in which two civilians and one officer were wounded when they were shot by the suspect. During the incident several San José officers initiated suppression fire to facilitate the rescue of trapped victims, shooting multiple rounds without hitting the suspect. The review panel also reviewed one of two cases in which the suspect died after officers had arrested the suspect and placed him in custody. The panel reviews these cases for the purpose of considering the potential need for new training or changes in department policies and procedures, just as it does for officer-involved shooting cases. The IPA participated in the review of both these cases.



### ***CITIZEN REQUEST FOR OFFICER IDENTIFICATION BACKGROUND***

This has been a long-standing issue for the IPA as it was first raised in the IPA 1997 Year End Report because, in part, readily providing identification when requested by a citizen should be one of the first steps to ensuring that the SJPD's community policing goals are attained. However, even though the SJPD Duty Manual was amended in 1998 to require that when a citizen requests the officer's identification the officer must provide his/her name, rank, and position on an Incident Card (Form 200-45a) or a Department approved business card, this issue continues to surface and has been given constant attention.

In the IPA 2000 Year End Report, we reported that of the 18 cases in 2000 where the issue of officer identification was alleged, nine of these cases were handled informally or without requiring a full investigation. The IPA hypothesized that handling these types

of cases informally was exacerbating the problem by minimizing the importance of the directive in the Duty Manual. As a result, the IPA recommended that SJPD Internal Affairs Unit should formally investigate allegations of officers refusing to identify him/herself under an Improper Procedure allegation.

In 2001, there were still 19 cases with allegations that an officer failed to properly identify him or herself. Six of these cases were handled informally or without requiring a full investigation, three were not investigated because the complainant failed to submit the required "Boland Admonishment" form and nine were formally investigated as part of formal investigations in cases with other allegations in addition to an allegation that an officer failed to provide proper identification. Of the 19 cases, one case was sustained after the IPA disagreed with the SJPD finding in the case.

In three of the cases investigated formally, the allegation of failure to properly identify oneself appeared

to be at least a technical violation of section C1409 of the SJPD Duty Manual and the assigned finding was "Supervisor Review." Four of the cases handled informally were also assigned a finding of "Supervisor Review."

A finding of Supervisor Review does not imply that the subject officer did or did not commit the transgression as described by the complainant. The purpose of the Supervisor Review process is to provide informal counseling opportunity between the subject officer, the subject officer's direct supervisor, and a supervisor from the Internal Affairs Unit. During these meetings, it should be stressed that even if the officer may have met the spirit of the rule in Section C1409 of the Duty Manual (i.e., writing name and badge number on the citation), officers are expected to strictly comply with its requirements and either provide the citizen requester a department approved Incident Card with the officer's name and badge number or a department approved business card.

Although the percentage of complaints with failure to identify allegations that were handled informally or without requiring a full investigation was reduced this year to 32% (6 out of 19) from last year's 50% (9 out of 18), the Internal Affairs Unit should continue to formally investigate these allegations under an Improper Procedure allegation.

Additionally, since the number of these types of allegations has not decreased, the SJPD should examine other potential methods to reinforce the importance of complying with Section C 1409 of the Duty Manual. The statement the IPA made last year concerning this type of complaint is even truer this year, "this is the type of complaint that should become obsolete."

### **MEDIATION PROGRAM**

Recognizing the need for an alternative to the existing formal citizen complaint investigation process, the IPA thought of other possible means to meet the needs of the community in a

manner that would generate a more trusting and respectful relationship between citizens and members of the San Jose Police Department. The result was the evolution of a voluntary mediation program. A program that would provide citizens and San Jose Police Officers with an alternative in resolving concerns and issues deriving from alleged minor misconduct. After careful thought and analysis, the IPA recommended that the SJPD research the feasibility of a voluntary mediation program.

As a result of the 1999 Year End Report, the SJPD approved the recommendation and agreed to conduct such a feasibility study. The IPA's goal in considering such a program was to provide the means for citizens to meet with San Jose Police Officers in a controlled environment that was conducive to positive interaction.

After the San Jose Police Department completed the study, their proposal confirmed that a voluntary mediation program could be a viable option for both citizens and

police officers. The voluntary mediation process would allow citizens to obtain answers or clarification to issues or concerns when the citizen is seeking an opportunity to be heard, and not necessarily desiring the investigative process against police officers to be initiated. Often citizens express their wish to engage in conversation with the officer in order to voice their issues directly and to hear the officer's response.

A retired superior court judge will facilitate the mediation sessions and the outcome will be kept confidential. Great care went into the design of the program in order to ensure a non-threatening environment for both citizens and officers. The informal atmosphere in which the session occurs will facilitate communication and understanding differences, with the goal of improving relations between citizens and the police.

**Update:** The Voluntary Mediation Program was implemented in 2001 as a pilot program, and became available as an alternative

method of resolving citizen complaints. Because the program was finalized at the latter part of the year, there was one mediation session scheduled in 2001, which will be conducted in the year 2002.